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04:01 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.	R.06-04-009

COMMENTS OF SIERRA PACIFIC POWER COMPANY (U 903 E) ON REEXAMINATION OF POLICIES ADOPTED IN DECISION 06-02-032

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November 16, 2006

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I. INTRODUCTION

Pursuant to the November 1, 2006 Ruling entitled, "Joint Administrative Law Judge's Ruling and Notice of Prehearing Conference" (November 1st Ruling), Sierra Pacific Power Company ("Sierra") presents the following pre-Prehearing Conference (PHC) comments addressing scoping and scheduling issues in Phase 2 of these proceedings. In addition to the following comments, Sierra incorporates its Comments filed on October 18, 2006, and Reply to comments filed on October 27, 2006, to the *Final Workshop Report: Interim Emissions Performance Standard Program Framework* ("Report") regarding the alternative compliance process for multi-jurisdictional utilities (MJUs) found in Cal. Pub. Util. Code § 8341(d)(9).

The November 1st Ruling asks all parties for their pre prehearing conference (PHC) comments on sets of complex substantive and procedural issues. The issues described in the November 1st Ruling describe not only questions about how to implement the load-based greenhouse gas (GHG) emissions cap adopted in D.06-02-032, but also how to integrate two other complex programs: the GHG emission performance standard (EPS) of Phase 1 as modified by SB 1368 and AB 32, the groundbreaking law pertaining to all significant sources of GHG emissions in California. For Sierra, this complexity is increased by operating an

integrated electrical system in two states that are subject to two public utility commissions. Sierra is concerned that the California Public Utilities Commission (CPUC or Commission) is trying to implement too many overlapping programs too quickly, resulting in duplication, uncertainty, higher ratepayer costs, and potential conflicts in programs and jurisdictions.

Sierra is predominantly a Nevada utility, with about 94% of its load in Nevada.[1] Sierra operates its own control area consistent with Western Electric Coordinating Council ("WECC") and North American Electric Reliability Council ("NERC") protocols, and its operations are outside of the control area of the California Independent System Operator. The CPUC has relieved Sierra from the AB 57 procurement planning compliance burdens consistent with the exemption set forth in Cal. Pub. Util. Code § 454.5(i).[2] Sierra has a highly regulated integrated resource planning (IRP) planning process where the Public Utilities Commission of Nevada (PUCN) reviews greenhouse gas emissions from its electric generating facilities. Sierra has submitted comments in Phase 1 of these proceedings requesting a process to implement the alternative compliance mechanism of Pub. Util. Code § 8341(d)(9) with regard to the GHG performance emission standard. Since the California Legislature has recognized a process exemption to the GHG performance emission standard of SB 1368 based on PUCN regulation, and the CPUC has deferred to the PUCN for resource procurement, the Commission should recognize a similar exemption from the proposed load-based cap. Recognizing a simlar alternative compliance process is needed to maintain a consistent approach for these related programs.

[1] Sierra's projected California sales represent a little over six percent (6%) of total sales, or approximately 535,638 MWhs.

[2] See D.04-02-044 (February 2004).

The November 1st Ruling also states that with the passage of AB 32 it will focus on evaluating the cost effectiveness of different implementation options. Sierra has a relatively small load in California, so it does not have the customer base to absorb large new program costs. Cost effectiveness, therefore, is an essential element of any new program and is a major issue in this rulemaking.

Sierra was made a party to this proceeding on October 6, 2006, and is unfamiliar with much of the work that went into development of the load-based GHG emissions cap adopted in D.06-02-032. With that reservation, Sierra will comment as best it can on the issues called out in the November 1st Ruling.

II. DISCUSSION

A. Phase 2 Issues Connected with Implementing the Cap on Sierra's Operations.

The November 1st Ruling seeks comments on the draft scope of issues listed in Attachment A to the ruling, as well as on any significant issue areas not identified there. Sierra will limit its comments to the issue areas that it deems most important.

1. Whether to apply the load-based cap to MJUs.

This is an issue of fundamental importance to Sierra. The vast majority of Sierra's load and generating resources are in Nevada. Thus, any load-based cap on GHG emissions would not only constrain Sierra's procurement decisions in other states but would have the effect of imposing California environmental standards on Sierra's Nevada generating facilities. Moreover, such regulation could easily conflict with the PUCN's resource decisions because the PUCN regulates Sierra's resource procurement that serves both Nevada and California load. What the PUCN may authorize, the CPUC may prohibit, or at least penalize Sierra for procuring.

An additional question is: How would the Commission determine a baseline? Because Sierra has an integrated system, it emits GHG from many fossil fuel plants in order to produce electricity for its California load. Must Sierra perform an emissions inventory at every one of its plants, and at every merchant plant from which it purchases electricity, though those sources serve a very small fraction of Sierra's load? In many instances, Sierra may not know the exact source of a power purchase, as sources and supplies may vary from day-to-day and hour-to-hour. Presumably California ratepayers would pay for these studies, but it is far from certain that the costs would be economic or cost effective. Sierra maintains several diesel generators in the Kings Beach area of Lake Tahoe that it runs during emergencies, such as severe snow storms. How would the Commission assign a baseline to units that unpredictably emit GHG but do so to maintain public health and safety?

Assuming that the Commission can quantify a baseline of GHG emissions attributable to California load, how does it enforce the baseline? How would the Commission ratchet down the baseline of emissions from generating facilities that serve load in other states?

Allocating allowances is crucially important if a cap and trade system is to maintain allowance prices within a reasonable price range. Since Sierra operates an integrated system of electricity generation over a large area, theoretically allowances should be based on generation from whatever facilities outside of California contribute to California load. If the CPUC does not get the allocation right, it is possible that credits or allowances from Nevada and distant states could flood the California market, thus devaluating in-state allowances and reducing the incentive for improvements to California power plants. Similarly, how would the CPUC allocate allowances to facilities subject to jurisdiction by public utility commissions of other states? If California assigns allowances to a plant in Nevada, for

example, how does the CPUC assign a figure for GHG emissions that does not interfere with a number of allowances that the PUCN may wish to assign to the same facility at a later date?

A verification and tracking system is essential infrastructure to prevent double counting of allowances. Verification and tracking of out-of-state emissions (and sources of emission allowances) promises to be exceedingly difficult because those facilities are beyond the jurisdiction of the CPUC. Thus, the CPUC must determine how to verify creation of allowances and track trades of credits to preserve the integrity of the system.

These and other questions should be addressed when deciding whether and if so how to include MJUs in a load-based cap framework. Sierra prioritizes these issues first because it needs to know if it will be subject to the California program and whether it should then participate in the five programmatic areas listed on page 7 of the November 1st Ruling. Moreover, Sierra is currently developing its triennial IRP to file with the PUCN in July 2007. It needs to know if a new CPUC program will encumber its procurement obligations before finalizing the 2007 IRP it submits to the PUCN for review and approval. Thus, Sierra needs this issue to be resolved in the 1st Quarter of 2007.

Attachment A also asks respondents to state how CPUC activities would integrate with CARB implementation activities related to AB 32. AB 32 authorizes CARB to adopt regulations by January 1, 2008 to "account for" GHG emissions from electricity imported into California and applies this requirement directly to California retail sellers. (California Health & Safety Code section 38530(b)(2).) While the CPUC and CARB requirements are in concert on this point, it could be difficult and expensive to obtain accurate data on all emission sources that contribute to Sierra's small California load. Sierra envisions that the CPUC and

CARB will integrate their implementation activities by working closely with each other and possibly with other state commissions with jurisdiction over the affected facilities.

2. Does the CPUC have authority to apply a load-based cap to MJUs?

If the CPUC intends to apply a load-based cap to MJUs, then Sierra requests the opportunity to comment upon their authority to do so. Sierra is particularly concerned about being subject to conflicting regulatory requirements that might apply to the vast bulk of its procurement of resources located in Nevada.

Sierra wishes to comment on whether the CPUC should approve procurement or resources decisions that are reviewed and approved by the PUCN. Sierra wishes to comment on CPUC authority in light of the passage of AB 32 and SB 1368. Sierra would also comment on the CPUC authority to approve contracts entered into in Nevada or otherwise outside of California, where the bulk of electricity purchased under those contracts does not flow to California. In other words, does the CPUC have authority over transactions taking place completely outside of California which principally benefit ratepayers in other states?

Sierra would also comment on whether the Interstate Commerce Clause of the U.S. Constitution might prevent the CPUC from regulating the GHG emissions of out-of-state generators selling into the California market, or selling to Sierra to supply its California load. Sierra would also comment on whether the CPUC's authority over procurement activities granted by the California Legislature or in the California Constitution reaches out-of-state to regulate pollution and emissions from its power plants in Nevada or purchased power from merchant generation.

This is a high priority issue for Sierra because of the impact it has on how Sierra would participate in the rest of this proceeding. Sierra also needs to know if it is subject to

CPUC authority in order to develop a comprehensive triennial IRP, due to the PUCN in July 2007. Thus, Sierra needs this issue to be resolved in the 1st Quarter of 2007.

3. What terms and conditions of D.06-02-032 should apply to MJUs?

Attachment A asks respondents to comment on which terms and conditions of D.06-02-028 that are applicable to large IOUs should also apply to MJUs, and where differences may be appropriate.

D.06-02-032 provides the broad outlines of a policy to apply a load-based cap on LSE GHG emissions. While the CPUC has decided some terms that such a program should contain, many necessary details remain to be determined. For example, while the CPUC has determined that an LSE's GHG emission baseline should be based on a historical year, which presumably AB 32 says will be 1990, it has not decided how a baseline would be calculated. Similarly, while the CPUC has determined that the cap should be lowered over time, it has not selected which kinds of flexible compliance mechanisms it would permit to comply with reductions in the cap. Sierra would need to know these details before it could commit to a position on which of many terms and conditions discussed in D.06-02-032 should apply to it.

Moreover, in A.1 above, Sierra has raised a number of questions that illustrate the difficulty of applying a load-based cap on emissions of out-of-state power plants, and particularly how the CPUC would apply its program to an MJU that procures electricity in an integrated fashion to customers in two states. Sierra believes that these questions must be answered before it can take a position on which terms and conditions of D.06-02-032 would be appropriate or cost effective to impose on its fossil fuel generating stations.

B. Recommended procedural process for the five program areas listed on page 7.

The November 1st Ruling requests that the parties discuss sequencing of implementation issues and the appropriate procedural process for addressing the programmatic areas of reporting, baseline development and allowance allocation, design of a cap structure and ratchet, flexible compliance mechanisms, and modeling to support evaluation and cost effectiveness. Sierra believes that the most appropriate procedure for the MJUs is to allow a similar alternative compliance process to what the Legislature permitted by Pub. Util. Code § 8341(d)(9). This process would recognize that because 94% of Sierra's load is in Nevada, along with virtually all of its supply resources, the issue is properly regulated by the PUCN.

If the Commission is not prepared to follow an alternative process for the MJUs, then Sierra believes that the draft schedule in Attachment B to the November 1st Ruling is organized in an appropriate sequence for developing the proposed program. However, Sierra is concerned that overlapping development of program areas compresses too many extremely important tasks into too short a time. Instead, Sierra generally supports finishing one program area before beginning the next, with minimal overlap. So, for example, if reporting issues are expected to take two quarters to resolve, then Sierra supports beginning the baseline development and allowance allocation program area in the third quarter of 2007. This would allow Sierra time to resolve jurisdictional and other issues described above.

Baseline development and allowance allocation are issues of critical importance to the success of any load-based cap, and particularly to a cap and trade program. The baseline provides the starting point for reducing LSE emissions, and technical questions need to be answered about how to measure and count tons of carbon dioxide equivalent. Even more

important is the proper allocation of emission allowances. Emission allowances have tremendous value because their potential value in the marketplace could greatly exceed the cost of compliance. Accordingly, they hold the potential to either efficiently incent actual reductions in GHG emissions, or over compensate certain parties if the allocation is determined incorrectly. For these reasons, the Commission should take its time and study the issue of proper allowance allocation, and it should not allow itself to be distracted by overlapping tasks. Moreover, this process should be implemented in collaboration with CARB, the CEC, and CCAR. Sierra believes that this program area should not commence before the third quarter of 2007, and the Commission should be ready to devote up to one year to it, through the second quarter of 2008. The Commission may also need to hold evidentiary hearings to properly augment the record with supporting economic data.

Sierra does not have additional recommendations on process or sequencing of the remaining program areas other than its position stated above that these areas should be developed in sequence rather than in parallel.

III. CONCLUSION

Sierra is predominantly a Nevada utility that operates an integrated, multi-state system outside of the California Independent System Operator. Sierra procures resources for both its Nevada and California load under the jurisdiction of the PUCN. Sierra submits that the CPUC should not apply a load-based cap to its multi-state procurement but if it does then the CPUC should recognize a similar alternative compliance process for implementation of the proposed load-based cap as the Legislature allows for the GHG performance standard. If the CPUC seeks to impose a load based GHG emissions cap on the MJUs, then it will raise a number of jurisdictional and practical issues on which Sierra will wish to comment. In

addition, Sierra believes that the procedural schedule in Attachment B compresses resolution of too many programmatic areas in too short a time frame. These issues should be dealt with sequentially and very deliberately.

November 15, 2006

Respectfully submitted,

By /s/

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Certificate of Service

I hereby certify that I have this day served a copy of "Comments of Sierra Pacific Power Company (U 903 E) On Reexamination Of Policies Adopted In Decision 06-02-032" on all known parties to R.06-04-009 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on November 15, 2006 at Sacramento, California

/s/

Eric Janssen

R.06-04-009
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